

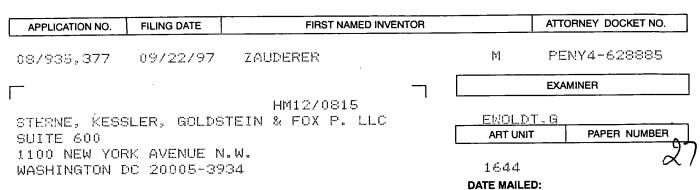
15



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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

08/15/01

Office Action Summary

Application No. 08/935,377

Applicant(s)

Zauderer, M.

Examiner

G. R. Ewoldt

Art Unit **1644**



The MAILING DATE of this communication appears	on the cover sheet with the correspondence address
communication. - Failure to reply within the set or extended period for reply will, by	FR 1.136 (a). In no event, however, may a reply be timely filed reation.
Status 1) Responsive to communication(s) filed on May 29, 2	2001 .
2a) This action is FINAL . 2b) This act	ion is non-final.
3) Since this application is in condition for allowance closed in accordance with the practice under Ex pa	except for formal matters, prosecution as to the merits is orte Quayle, 1935 C.D. 11; 453 O.G. 213.
Disposition of Claims	
4) X Claim(s) <u>68-120</u>	is/are pending in the application.
4a) Of the above, claim(s)	is/are withdrawn from consideration.
5) Claim(s)	is/are allowed.
6)	is/are rejected.
7)	is/are objected to.
8) 💢 Claims <u>68-120</u>	are subject to restriction and/or election requirement.
Application Papers	
9) \square The specification is objected to by the Examiner.	
10) The drawing(s) filed on is/are	objected to by the Examiner.
11) The proposed drawing correction filed on	is: a)□ approved b)□ disapproved.
12) \square The oath or declaration is objected to by the Exam	iner.
3. Copies of the certified copies of the priority d	ve been received. ve been received in Application No ocuments have been received in this National Stage
*See the attached detailed Office action for a list of th	e certified copies not received.
14) Acknowledgement is made of a claim for domestic	priority under 35 U.S.C. § 119(e).
Attachment(s)	
15) Notice of References Cited (PTO-892)	18) Interview Summary (PTO-413) Paper No(s).
16) Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) Notice of Informal Patent Application (PTO-152)
17) Information Disclosure Statement(s) (PTO-1449) Paper No(s).	20) Uther:

Serial No.08/935,377 Art Unit 1644

DETAILED ACTION

- 1. This application contains inventions drawn to patentably distinct species. Applicant is required under 35 U.S.C. § 121 to elect: a specific method of selecting a nucleic acid molecule encoding a target epitope comprising:
 - A) a specific vector, such as SEQ-ID-NO: 1, 3, 6-9,
- B) a **specific**_transfer plasmid, such as one of those listed in claim 116.
- 2. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The different vectors comprise different viral genomes, such as vaccinia virus or a herpes virus, with different infectivities and pathogenicities. The different transfer plasmids comprise different nucleic acid sequences with different molecular biological properties. Therefore, the species are independent and patentable over one another.

- 3. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.
- 4. Any inquiry concerning this communication from the examiner should be directed to Dr. Gerald Ewoldt whose telephone number is (703) 308-9805. The examiner can normally be reached Monday through Thursday from 7:30 am to 5:30 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973.

G.R. Ewoldt, Ph.D. Patent Examiner Technology Center 1600 August 10, 2001 Patrick J. Nolan, Ph.D. Primary Examiner

Technology Center 1600